INITIAL DECISION RELEASE NO. 326
ADMINISTRATIVE PROCEEDING
FILE NO. 3-12433

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

In the Matter of	:	
	:	INITIAL DECISION
CONRAD P. SEGHERS	:	February 5, 2007
	:	

APPEARANCES: Karen Matteson for the Division of Enforcement, Securities and Exchange Commission

Charles B. Manuel, Jr. and Shira Y. Rosenfeld, of Manuel & Rosenfeld, LLP, and Carl A. Generes for Conrad P. Seghers

BEFORE: Robert G. Mahony, Administrative Law Judge

INTRODUCTION

The Securities and Exchange Commission (SEC or Commission) initiated this proceeding with an Order Instituting Proceedings (OIP) on September 26, 2006, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that on September 14, 2006, the United States District Court for the Northern District of Texas (District Court) entered a final judgment against Respondent Conrad P. Seghers (Seghers) and permanently enjoined him from violating Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.[1]

Seghers filed an Answer to the OIP. I granted the Division of Enforcement (Division) leave to file a Motion for Summary Disposition. The Division filed its Motion for Summary Disposition, Declaration of Karen Matteson, and accompanying exhibits on December 6, 2006. Seghers filed a Motion for Summary Disposition, a Motion to Dismiss, or in the Alternative Stay, and a

[1] An Amended Final Judgment was entered November 20, 2006, which reiterates the permanent injunction from the September 14, 2006, Final Judgment.

Memorandum of Law in Opposition (Opposition). The Division filed its Reply on January 22, 2007.[2]

SUMMARY DISPOSITION

Rule 250(a) of the Commission's Rules of Practice provides that after a respondent has filed an answer and documents have been made available to the respondent for inspection and copying, a party may make a motion for summary disposition as to any or all allegations of the OIP against a respondent. 17 C.F.R. § 201.250(a). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice, 17 C.F.R. § 201.323. An administrative law judge may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the moving party is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(a), (b).

FINDINGS OF FACT

Several of the exhibits accompanying the Division's Motion for Summary Disposition and Seghers's Opposition thereto involve matters that may be officially noticed under 17 C.F.R. § 201.323. Based on those exhibits and Seghers's Answer to the OIP, there is no genuine issue as to the following material facts.

Conrad P. Seghers, age 39, is a resident of Garland, Texas. (Resp. Ex. 1.) The underlying injunctive action arose from Seghers's participation in three hedge funds: Integral Hedging, L.P.; Integral Arbitrage, L.P.; and Integral Equity, L.P. (Collectively, Funds). The Funds' assets were invested through Morgan Stanley Dean Witter (Morgan Stanley) in an account opened by Samer M. El Bizri in June 1999. Olympia Capital Associates, L.P. (Olympia), acted as the administrator for the Funds and issued monthly and quarterly statements to investors detailing the Funds' value. (Motion at 1.) Seghers participated in the offer and sale of limited partnership interests in the Funds. At all relevant times, Seghers acted as an investment adviser. (Div. Ex. 1 at 2.)

As part of Seghers's participation in the Funds, Seghers provided information relating to the Funds' value to Olympia.[3] Olympia relied on this information to provide investors with monthly

[2] The Division's Motion for Summary Disposition will be cited as "(Motion at __.)" and the exhibits attached to the Declaration will be cited as "(Div. Ex. __.)." Seghers's Answer will be cited as "(Answer at __.)," his Brief in Opposition will be cited as "(Resp. Br. at __.)," and the exhibits attached to the Brief in Opposition will be cited as "(Resp. Ex. __.)."

[3] Seghers denies the allegations that he disseminated misleading information to Olympia and states that it was Olympia that furnished asset values to Seghers and the Funds' investors. (Resp. Br. at 4-5.) However, this is not the proper venue for such an argument. The District Court found that there was sufficient evidence to support the jury's finding that Seghers provided Olympia with information that caused Olympia to overstate the Funds' value to investors. Findings of facts and conclusions of law made in a prior injunctive action are immune from attack

and quarterly statements detailing the value of the investors' investments in the Funds. (Div. Ex. 1 at 5.) Seghers became aware that the information that he was providing to Olympia was inaccurate through communications with Morgan Stanley. Seghers asked Morgan Stanley to "document the fact that Morgan Stanley agreed that the statements had been wrong . . . ." (Div. Ex. 1 at 8.) In a June 6, 2001, response letter Morgan Stanley wrote that the statement values for the Funds "have been incorrect since February 2001 . . . [i]ncluding most recently the statements for May 31, 2001. They have not accurately reflected the actual value of the accounts during any of these periods." Further, Seghers testified at trial that he "had known that the [Morgan Stanley] statements were incorrect." (Div. Ex. 1 at 8-9.) For the period from June 6, 2001, to September 30, 2001, Seghers provided Olympia with information that caused Olympia to overstate the Funds' value to investors by 47% to 72%. (Motion at 4.)

On June 15, 2001, Seghers e-mailed Morgan Stanley stating that "everyday" there are new errors. (Div. Ex. 1 at 9.) Seghers added, "please help get this fixed, together with our web pages that are incorrect so frequently that they can never be trusted." Id. Seghers further stated, "Morgan Stanley's continued inaccuracies with respect to our account positions and incorrect order fills continue to materially damage our funds and the respective investors." Id. Finally, on August 1, 2001, Seghers told his attorney that the Funds were "in the toilet." Id. Despite the fact that Seghers knew the Funds' value was being overstated, on July 13, 2001, Seghers sent a letter to investors claiming "positive developments" and stating that "amidst the volatility in the markets we have continued to post respectable returns." (Div. Ex. 1 at 7.)

As a result of this conduct, the Commission filed a civil action against Seghers in the United States District Court for the Northern District of Texas alleging that Seghers violated Section 5 of the Securities Act, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206 of the Advisers Act. Following a jury trial, the jury returned a verdict finding Seghers liable for violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206 of the Advisers Act. On September 14, 2006, the District Court issued a memorandum opinion and order: (1) enjoining Seghers from future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206 of the Advisers Act; and (2) requiring Seghers to pay $50,000 in civil penalties. (Div. Ex. 1 at 10-11.)

CONCLUSION OF LAW

Section 203(f) of the Advisers Act provides that the Commission may sanction against a person associated with an investment adviser if such a person is enjoined from any action, conduct, or practice specified in 203(e)(4) of the Advisers Act. 15 U.S.C. § 80b-3(f). Section 203(e)(4) of the Advisers Act includes permanent or temporary injunctions by any court of competent jurisdiction "from . . . engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security." 15 U.S.C. § 80b-3(e)(4). Based on the findings set forth above, I conclude the United States District Court for the Northern

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in, as here, a follow-on administrative proceeding. Ted Harold Westerfield, 54 S.E.C. 25, 32 n.22 (1999).

District of Texas is a court of competent jurisdiction and that Seghers was enjoined within the meaning of Section 203(e)(4) of the Advisers Act.

SANCTIONS

A. Considerations for Sanctions

I have concluded that Seghers has been permanently enjoined and that the misconduct underlying the injunctive action occurred while he was acting as an investment adviser. As such, the only remaining question is what sanctions, if any, are appropriate. Section 203(f) of the Advisers Act permits the Commission to censure, impose limitations on the activities of such a person, suspend that person for a period not exceeding twelve months, or bar that person from associating with an investment adviser if the Commission finds, on the record after notice and an opportunity for a hearing, that such a sanction is in the public interest. 15 U.S.C. § 80b-3(f).

In determining whether a sanction is in the public interest, the Commission considers the following factors.

> [T]he egregiousness of the [respondent's] actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future violations, the [respondent's] recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). No one factor controls. See SEC v. Fehn, 97 F.3d 1276, 1295-96 (9th Cir. 1996). The severity of the sanction depends on the facts of each case and the value of the sanction in preventing recurrence. Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); Leo Glassman, 46 S.E.C. 209, 211-12 (1975). Sanctions related to the registration status of regulated persons are not intended to punish a particular respondent but to protect the public from future harm. Glassman, 46 S.E.C. at 211-212.

An injunction from violating the antifraud provisions of the federal securities laws has especially serious implications for the public interest. See Michael T. Studer, 83 SEC Docket 2853, 2861 (Sept. 20, 2004); Marshall E. Melton, 80 SEC Docket 2812, 2822-26 (July 25, 2003). The existence of such an injunction can, in the first instance, indicate the appropriateness in the public interest of revocation of registration or a suspension or bar from participation in the securities industry. See Michael Batterman, 84 SEC Docket 1349, 1358-59 (Dec. 3, 2004); Melton, 80 SEC Docket at 2822-26. The public interest requires a severe sanction when a respondent's past misconduct involves fraud, as is the case here, because opportunities for dishonesty occur constantly in the securities business. Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976).

B. Sanctions

The Division seeks to bar Seghers from association with an investment adviser. (Motion at 1.) Seghers contends that no sanctions are warranted, or in the alternative, that a suspension of less than twelve months is appropriate. (Resp. Br. at 9.)

Seghers argues that both he and the SEC are appealing the District Court's decision, and therefore, this administrative proceeding should be dismissed or, alternatively, stayed until conclusion of the appeals of the injunctive action. (Resp. Br. at 3.) The fact that Seghers and the Commission are still litigating the underlying action does not affect the statutory authority to conduct this proceeding. Elliot v. SEC, 36 F.3d 86, 87 (11th cir. 1994); Studer, 83 SEC Docket at 2859. The injunction entered against Seghers is a valid basis for administrative action.

Seghers also contends that because the District Court ordered that "all relief not expressly granted herein is denied," the SEC's administrative claim should be denied. Neither res judicata nor collateral estoppel limit the Commission's authority to institute administrative proceedings based on an injunction. The authority to institute administrative proceedings is expressly authorized by Section 203(f) of the Advisers Act. 15 U.S.C. § 80b-3(f); see also Studer, 83 SEC Docket at 2858; Barr Fin. Group, Inc., 81 SEC Docket 828, 840 n.29 (Oct. 2, 2003) (holding that "[w]hile collateral estoppel precludes respondents or the Division from relitigating factual matters already decided by the District Court, it in no way limits the Commission's authority to institute administrative proceedings based on an injunction.").

Turning to the Steadman factors, I find that Seghers's conduct was egregious, recurrent, and committed with a high degree of scienter. From June 6, 2001, through September 30, 2001, Seghers caused Olympia to overstate the Funds' value by 47% to 72%, which resulted in an overstatement of between approximately $23 million and $29.5 million. (Div. Ex. 1 at 5.) This overstatement continued over several months, even after Seghers was fully aware that he was providing incorrect information. In doing so, Seghers acted knowingly or with severe recklessness. (Div. Ex. 1 at 9.) Further, since graduating with a Ph.D. in microbiology, Seghers has exclusively devoted himself to investing, largely on the behalf of others. Therefore, his occupation will present opportunities for future violations.[4] Seghers claims "with utmost sincerity" that he will not violate the securities laws in the future. (Resp. Br. at 9.) I do not find this claim to be compelling as Seghers fails to see the wrongfulness of his conduct and continues to blame everyone but himself, including the SEC for the "enormous and undeserved hell [that counsel] has made me endure simply by her false allegations."

Considering the Steadman factors in their entirety, I conclude it is necessary and appropriate in the public interest to bar Seghers from associating with an investment adviser.

ORDER

IT IS ORDERED that the Division of Enforcement's Motion for Summary Disposition against Conrad P. Seghers is GRANTED;

[4] Seghers asserts that he does not intend to continue working as an investment adviser. (Resp. Ex. 1 at 5.) However, Seghers leaves open the possibility of returning at some later date by stating, "in the future I should not be precluded from the opportunity to resume my career that the actions of others have single-handedly shattered and destroyed." (Resp. Ex. 1 at 5.) Without an investment adviser bar, Seghers would be free to resume investment adviser activities.

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Conrad P. Seghers is BARRED from association with an investment adviser; and

IT IS FURTHER ORDERED that Seghers's Motion for Summary Disposition and Motion to Dismiss, or in the Alternative Stay, are DENIED.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact, or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Robert G. Mahony
Administrative Law Judge